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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Maria Markham,

Plaintiff,

vs.

Prosper Marketplace, Inc., and I.C.
Systems, Inc.,

Defendant(s).

Case No.

**COMPLAINT FOR BREACH OF
CONTRACT, BREACH OF THE
IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING,
VIOLATIONS OF THE ROSENTHAL
FAIR DEBT COLLECTION
PRACTICES ACT [CAL. CIV. CODE §
1788 et seq], AND VIOLATIONS OF
THE FAIR DEBT COLLECTION
PRACTICES ACT [15 U.S.C. § 1692 et
seq]**

DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff by and through her attorney of record, and hereby files
this complaint and alleges as follows:

I. INTRODUCTION

1.1 This is an action against Defendant Prosper Marketplace, Inc. (“Prosper”), for
breach of contract and breach of the implied covenant of good faith and fair dealing and

1 violations of the Rosenthal Fair Debt Collection Practices Act, codified as amended at
2 Cal. Civ. Code § 1788, et seq. (hereinafter “Rosenthal Act.”) The Rosenthal Act prohibits
3 debt collectors from engaging in unfair or deceptive acts or practices in the collection of
4 consumer debts.

5 1.2 This is an action against Defendant I.C. Systems, Inc. (“I.C. Systems”), for
6 violations of the Fair Debt Collection Practices Act, codified as amended at 15 U.S.C. §
7 1692, et seq. (hereinafter “FDCPA”). The FDCPA prohibits debt collectors from
8 engaging in unfair and deceptive practices in the collection of consumer debts.

9 **II. JURISDICTION AND VENUE**

10 2.1 Jurisdiction is proper in the Northern District of California, because it has original
11 subject matter jurisdiction over Plaintiff’s federal statutory claim for violations of the
12 FDCPA, pursuant to 28 U.S.C. section 1331. Furthermore, this Court may exercise
13 supplemental jurisdiction over Plaintiff’s related state law claims pursuant to 28 U.S.C.
14 section 1367(a).

15 2.2 This Court may exercise personal jurisdiction over Prosper because Prosper’s
16 principal place of business is within the State of California in this judicial district

17 2.3 This Court may exercise personal jurisdiction over I.C. Systems, pursuant to
18 California Code of Civil Procedure section 410.10.

19 2.4 Venue is proper in this Court because a substantial part of the events and
20 omissions giving rise to Plaintiff’s claim occurred in California within this judicial
21 District.
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III. PARTIES

3.1 Plaintiff Maria Markham (hereinafter “Plaintiff”) is a resident of Coral Springs, Florida.

3.2 Defendant Prosper is a for-profit business entity incorporated in the state of Delaware and has its principal place of business located at 221 Main Street, Suite 300, San Francisco, CA 94105.

3.3 Defendant I.C. Systems, is a for-profit company formed under the laws of the State of Minnesota, with its principal place of business located at 444 Highway 96 East St. Paul, MN 55127-2557.

IV. FACTS

4.1 Defendant Prosper issued a loan account, ending in account number 3553, to Plaintiff relating to consumer purchases.

4.2 The debt at issue arises out of an alleged transaction which was primarily for personal, family or household purposes and constitutes a “consumer credit transaction” and a “consumer debt” for purposes of CAL. CIV. CODE § 1788.2 subparts (e) and (f).

4.3 On or about August 17, 2017, Plaintiff entered into a settlement agreement with Defendant Prosper to settle and close her Prosper account ending in 3553. A copy of the recorded settlement agreement confirmation is in possession of Plaintiff and may be made available on request.

4.4 Pursuant to the settlement agreement, Plaintiff agreed to make twelve (12) payments, totaling \$6,927.00, starting on August 19, 2017, and finishing on July 30, 2018.

1 4.5 Pursuant to the settlement agreement, Plaintiff made the requisite payments,
2 totaling \$6,927.00, and Defendant Prosper accepted each payment. A copy of the proof
3 of payments is attached hereto as **Exhibit A**.

4 4.6 On or about February 10, 2021, an individual identifying herself as “Lisa
5 Diamond” on behalf of Defendant I.C. Systems called Plaintiff’s debt settlement
6 representative National Debt Relief (“NDR”) and requested a settlement on Plaintiff’s
7 account ending in 3553. Ms. Diamond stated that the current balance on the account is
8 \$8,588.38.

9 4.7 Lisa Diamond informed NDR that Prosper had accepted all previous payments
10 made per the arrangement but Prosper had applied the previous payments toward the pre-
11 settled balance of the account and not toward the settlement agreement. Lisa further
12 asserted falsely that, because Prosper never received an agreement signed by the Plaintiff,
13 there never was a settlement agreement.

14 4.8 On February 24, 2021, NDR called I.C. Systems and spoke with a person
15 identifying himself as “Momo.” Momo falsely stated that the current balance on the
16 account was \$8,588.38 as of February 24, 2021. Momo offered settlement options of fifty
17 (50) percent of the \$8,588.38 in twelve (12) payments, or forty-five (45) percent of
18 \$8,588.38 in one (1) lump sum payment. Momo further asserted that, because the
19 Plaintiff never signed the electronic copy of the previous agreement, this account had
20 been transferred to I.C. Systems. Momo then stated that at this stage no signature is
21 required for agreement.
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1 4.9 On May 13, 2021, the undersigned sent a demand letter to both Defendants
2 Prosper and I.C. Systems in an attempt to resolve this matter amicably. Neither Prosper
3 nor I.C. Systems responded. A copy of the demand letter is attached hereto as **Exhibit B**.

4 4.10 On June 29, 2021, the undersigned called I.C. Systems twice and left a voicemail.
5 I.C. Systems did not respond. On July 14, 2021, the undersigned again called I.C.
6 Systems and was unable to speak with a representative.

7 4.11 At all times pertinent hereto, the Defendants acted by and through their agents,
8 servants and/or employees, who were acting within the scope and course of their
9 employment, and under the direct supervision and control of the Defendants.

10 4.12 At all times pertinent hereto, the conduct of the Defendants, as well as that of
11 their agents, servants and/or employees, was malicious, intentional, willful, reckless,
12 negligent and in wanton disregard for federal law and the rights of the Plaintiff herein.
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15 **COUNT I**
16 (Breach of Contract by Defendant Prosper)

17 5.1 Plaintiff reasserts and incorporates herein by reference all facts and allegations set
18 forth hereinabove.

19 5.2 On or about August 17, 2017, Plaintiff entered into a settlement agreement with
20 Defendant Prosper to settle and close her Prosper account ending in 3553.

21 5.3 Pursuant to the settlement agreement, Plaintiff made twelve (12) payments
22 totaling \$6,927.00 and Defendant Prosper accepted each payment.

23 5.4 Despite accepting Plaintiff's payments pursuant to the settlement agreement,
24 Defendant Prosper did not close Plaintiff's account as settled. Instead, Defendant Prosper
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1 assigned Plaintiff's Prosper account to Defendant I.C. Systems with an outstanding
2 balance of \$8,588.38.

3 5.5 Defendant Prosper's actions constitute breach of contract where Defendant
4 Prosper accepted Plaintiff's twelve (12) payments made pursuant to the settlement
5 agreement but did not close Plaintiff's Prosper account ending in 3553 as settled.

6 5.6 Additionally, Defendant Prosper's actions constitute breach of contract where
7 Defendant Prosper, assigned Plaintiff's settled account to Defendant I.C. Systems with an
8 outstanding balance of \$8,588.38.

9 5.7 As a result of Defendant Prosper's actions, Plaintiff has suffered actual and
10 monetary damages.
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12 **COUNT II**

(Breach of the Implied Covenant of Good Faith and Fair Dealing by Defendant Prosper)

13 6.1 Plaintiff reasserts and incorporates herein by reference all facts and allegations set
14 forth above hereinabove.

15 6.2 Defendant Prosper owed Plaintiff an implied covenant of good faith and fair
16 dealing with respect to the settlement agreement entered between Defendant Prosper and
17 Plaintiff.
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19 6.3 By way of the conduct described hereinabove, including but not limited to
20 assigning Plaintiff's settled account to I.C. Systems for collection, Defendant Prosper
21 breached the implied covenant of good faith and fair dealing that it owed to Plaintiff with
22 respect to the settlement agreement entered between Defendant Prosper and Plaintiff on
23 August 17, 2017.
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1 6.4 Defendant Prosper has acted unreasonably and in bad faith and deprived Plaintiff
2 of the benefit of the bargain of the settlement agreement by refusing to perform its
3 obligations under the settlement agreement.

4 6.5 Specifically, Defendant Prosper owed a duty to Plaintiff to take all steps to honor
5 the settlement agreement and to not engage in conduct that might result in the settlement
6 agreement not being honored.

7 6.6 As a result of Defendant Prosper's breach of the implied covenant of good faith
8 and fair dealing, Plaintiff has suffered actual and monetary damages.

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10 **COUNT III**
(Violations of the Rosenthal Act by all Defendants)

11 7.1 Plaintiff reassert and incorporate herein by reference all facts and allegations set
12 forth hereinabove.

13 7.2 It is the purpose of the Rosenthal Fair Debt Collection Practices Act (hereinafter
14 "Rosenthal Act") to prohibit debt collectors from engaging in unfair or deceptive acts or
15 practices in the collection of consumer debts and to require debtors to act fairly in
16 entering into and honoring such debts, as specified at CAL CIV. CODE § 1788.1(b).

17 7.3 The term "debt collector" is defined as any person who, in the ordinary course of
18 business, regularly, on the behalf of themselves or others, engages in debt collection.
19 CAL CIV. CODE § 1788.2(c).

20 7.4 Defendant Prosper is a "debt collector" as defined by CAL CIV. CODE § 1788.2
21 (c). Defendant I.C. Systems is also a "debt collector" as defined by CA CIVIL § 1788.2
22 (c).
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1 7.6 The term "debtor" means a natural person from whom a debt collector seeks to
2 collect a consumer debt which is due and owing or alleged to be due and owing from
3 such person. CAL CIV. CODE § 1788.2(h).

4 7.7 Plaintiff is a "debtor" as defined by CAL. CIV. CODE § 1788.2(h).

5 7.8 The term "creditor" means a person who extends consumer credit to a debtor.
6 CAL CIV. CODE § 1788.2(i).

7 7.9 Defendant Prosper is a "creditor" under CAL CIV. CODE § 1788.2(i).

8 7.10 Defendant Prosper's actions were unfair and deceptive where Defendant Prosper
9 did not close Plaintiff's Prosper account as settled after accepting payments made
10 pursuant to the settlement agreement.

11 7.11 Additionally, Defendant Prosper misrepresented the amount of Plaintiff's debt
12 where Defendant Prosper assigned Plaintiff's account ending in 3553 with the stated
13 outstanding balance of \$8,588.38. Defendant Prosper's actions were a misrepresentation
14 of Plaintiff's debt because the actual balance of Plaintiff's Prosper account ending in
15 3553 was \$0.00 after Plaintiff made the requisite payments pursuant to the settlement
16 agreement. After payment, Defendant Prosper should have marked Plaintiff's account
17 ending in 3553 as settled and closed.

18 7.12 Further, Defendant Prosper misled the Plaintiff by entering into a settlement
19 agreement, collecting all twelve (12) the payments as per the terms of the agreement, and
20 then assigning the debt to Defendant I.C. Systems for further collection.

21 7.13 Defendant I.C. Systems' actions violated the Rosenthal Act where Defendant I.C.
22 Systems attempted to collect on a settled debt by calling NDR on February 10, 2021, and
23 24 25

1 requesting settlement offers, and again on February 24, 2021, when communicating
2 additional settlement offers to the Plaintiff's debt settlement representative.

3 7.14 Additionally, Defendant I.C. Systems misrepresented the amount of debt owed on
4 Plaintiff's Prosper account when Defendant I.C. Systems called NDR on February 10,
5 2021, and asserted that the amount of debt owed by Plaintiff totaled \$8,588.38, and again
6 on February 24, 2021, when a representative of I.C. Systems again stated the amount of
7 the debt owed by Plaintiff to be \$8,588.38.

8 7.15 Defendant Prosper and Defendant I.C. Systems knew or should have known that
9 their actions violated the Rosenthal Act. Additionally, Defendant Prosper and Defendant
10 I.C. Systems could have taken the steps necessary to bring their actions within
11 compliance with the Rosenthal Act but neglected to do so and failed to adequately review
12 their actions to ensure compliance with said laws.

13 7.16 As a result of the above violations, Defendant Prosper and Defendant I.C.
14 Systems are liable to Plaintiff for actual damages, statutory damages, attorney's fees, and
15 costs.
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17 **COUNT IV**

18 (Violations of the Fair Debt Collection Practices Act by Defendant I.C. Systems)

19 8.1 Plaintiff reasserts and incorporates herein by reference all facts and allegations set
20 forth hereinabove.

21 8.2 The communications described hereinabove between Defendant I.C. Systems and
22 Plaintiff constitute "communications" relating to a "debt" as defined by 15 U.S.C §
23 1692a subparts (2) and (5) of the FDCPA.

24 8.3 The FDCPA at 15 U.S.C. § 1692f prohibits the use of unfair or unconscionable
25 practices to collect a debt, including collection of any amount not authorized by the

1 contract or law. The FDCPA at 15 U.S.C. § 1692e(2)(A) prohibits the false
2 representation of the character, amount or legal status of any debt. The FDCPA at 15
3 U.S.C. § 1692e(10) prohibits any false, misleading, or deceptive representation or means
4 in connection with the collection of a debt.

5 8.4 Defendant I.C. Systems engaged in abusive, deceptive, and unfair collection
6 practices where Defendant I.C. Systems attempted to collect on a settled debt.

7 8.5 Additionally, Defendant I.C. Systems misrepresented the amount of debt owed by
8 Plaintiff where Defendant I.C. Systems called NDR on February 10, 2021 and asserted
9 the amount of debt owed by Plaintiff totaled \$8,588.38 (when in fact the settled debt had
10 a balance of \$0.00). I.C. Systems again misrepresented the amount of debt owed by
11 Plaintiff on February 24, 2021, when NDR called I.C. Systems to inquire about Plaintiff's
12 Prosper account and an I.C. Systems representative stated that the amount of debt owed
13 by Plaintiff totaled \$8,588.38.

14 8.6 Further, Defendant I.C. Systems misrepresented the legal status of Plaintiff's debt
15 where Defendant I.C. Systems attempted to collect on a settled debt.

16 8.7 Defendant I.C. Systems knew or should have known that its actions violated the
17 FDCPA. Additionally, Defendant I.C. Systems could have taken the steps necessary to
18 bring its actions within compliance with the FDCPA but neglected to do so and failed to
19 adequately review its actions to ensure compliance with said laws.

20 8.8 As a result of the above violations of the FDCPA, Defendant I.C. Systems is
21 liable to Plaintiff for actual damages, statutory damages, attorney's fees, and costs.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands that judgment be entered against Defendants as follows:

- (a) That judgment be entered against Defendant Prosper for actual and monetary damages accrued by Plaintiff as a result of Defendant Prosper's breach of contract;
- (b) That judgment be entered against Prosper for actual and monetary damages accrued by Plaintiff as a result of Defendant Prosper's breach of the implied covenant of good faith and fair dealing;
- (c) That judgment be entered against Defendant Prosper and Defendant I.C. Systems for actual damages pursuant to CA CIVIL § 1788.30(a);
- (d) That judgment be entered against Defendant Prosper and Defendant I.C. Systems for statutory damages pursuant to California Civil Code § 1788.30(b);
- (e) That judgment be entered against Defendant I.C. Systems for actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- (f) That judgment be entered against Defendant I.C. Systems for statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- (g) That the Court award costs and reasonable attorney's fees and costs pursuant to CAL. CIV. CODE § 1788.30(c) and 15 U.S.C. § 1962k(a)(3); and
- (h) That the Court grant such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

Law Offices of Robert S. Gitmeid, P.C.

/s/Stanley Apps

Stanley R. Apps, Esq.
Attorney for Plaintiff Maria Markham